

EXHIBIT D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NEW YORK IMMIGRATION COALITION, ET AL.,

Plaintiffs,

vs. Case No. 1:18-CF-05025-JMF

UNITED STATES DEPARTMENT OF COMMERCE, ET AL.,

Defendants.

Washington, D.C.

Tuesday, August 28, 2018

Deposition of:

KAREN DUNN KELLEY

called for oral examination by counsel for
Plaintiffs, pursuant to notice, at the office of
Arnold & Porter, 601 Massachusetts Avenue NW,
Washington, D.C., before KAREN LYNN JORGENSEN,
RPR, CSR, CCR of Capital Reporting Company,
beginning at 9:04 a.m., when were present on
behalf of the respective parties:

Veritext Legal Solutions

Mid-Atlantic Region

1250 Eye Street NW - Suite 350

Washington, D.C. 20005

1 to Mr. -- I'm going to say Mr., but probably, more
2 likely, Secretary Ross -- about the 2020 census,
3 about any issue pertinent to the 2020 census?

4 A During that spring.

5 Q And what did he tell you about the 2020
6 census, specifically?

7 A That it was critically important. It was
8 one of the most important things that the
9 Department of Commerce was going to be undertaking
10 and that it would be an important purview.

11 Q And he mentioned that one thing that was
12 being discussed as early as the spring of 2017 was
13 reinstating or adding a citizenship question to
14 the 2020 census?

15 MR. GARDNER: Objection. Form.

16 I said objection, form. You still need
17 to answer.

18 THE WITNESS: Can you repeat the
19 question?

20 BY MR. GROSSI:

21 Q Yes. You knew as early as the spring of
22 2017, that one issue would be adding a citizenship

1 question or reinstating a citizenship question to
2 the 2020 census?

3 A I don't recall exactly when I learned
4 that fact.

5 Q It was surely before you were nominated
6 in May, correct?

7 MR. GARDNER: Objection. Form.

8 THE WITNESS: I truly do not remember
9 when I learned that.

10 BY MR. GROSSI:

11 Q It was before you appeared for your
12 confirmation hearing in July, correct?

13 A I actually do not remember exactly when I
14 learned that question. I was getting so
15 many -- that issue -- I had so many facts and so
16 much information that I was learning, that exactly
17 when that was part of it, I do not know. I
18 apologize.

19 Q I mean, it's certainly possible you heard
20 it in the spring of 2017, right?

21 A I wouldn't deny it, and I wouldn't
22 confirm it. It is possible. I would agree with

1 that.

2 Q You know from just thinking about the
3 case that Secretary Ross was interested in the
4 citizenship question as early as March or April of
5 2017, correct?

6 MR. GARDNER: Objection. Lack of
7 foundation.

8 BY MR. GROSSI:

9 Q That's something you've heard from
10 Secretary Ross or others?

11 A Yes.

12 Q Now, what I like to do --

13 A Can I -- can I -- can you repeat that
14 question, please?

15 Q Well, you gave the answer.

16 My question was simply that you knew --
17 you know now, from all of your review --

18 A That was the question that I was
19 answering. That yes, I do know now.

20 Q And you believe you learned it at the
21 time, when you talked to Secretary Ross about the
22 census?

1 MR. GARDNER: Objection.

2 Mischaracterizing the witness's prior testimony.

3 BY MR. GROSSI:

4 Q Correct? It's a new question.

5 MR. GARDNER: I just said object -- you
6 can still answer the question. I just lodged my
7 objection for the record.

8 THE WITNESS: I -- I apologize. I don't
9 mean to be difficult. I am getting very confused.
10 You're going from present to past tense. I don't
11 know where we are right now.

12 BY MR. GROSSI:

13 Q Okay.

14 A So let me be clear. I absolutely know
15 those things now. I do not know when I learned
16 that actual -- the citizenship question --
17 reinstatement of the citizenship question back in
18 the spring or summer or whatever of 2017. I do
19 not remember that.

20 Q And you know it now -- at least now,
21 because you've talked to Secretary Ross about it
22 subsequently, and he's let you know that he was

1 interested as early as the spring --

2 MR. GARDNER: Objection. Form.

3 BY MR. GROSSI:

4 Q -- of 2017?

5 A He or others.

6 Q He or others, or he and others?

7 A He or others.

8 Q Okay. Who are the others?

9 A I don't know. I do know, because it's
10 been public and it's been in the press. I don't
11 know that I've had the specific conversation with
12 the Secretary about that.

13 Q Ever? See, what I'm looking for is
14 conversations --

15 A Yeah. Tell me what you're looking for.

16 Q I'm looking for conversations you've had
17 with Secretary Ross at any time in which he
18 indicated in any way that he was interested in the
19 citizenship question as early as the spring of
20 2017 and --

21 A And I don't remember. I don't remember.
22 I do know in the spring of -- of '17, the GAO had

1 just as we asked Karen what I said, which was on
2 the record.

3 Q Let me have marked the next exhibit.
4 (Plaintiffs' Exhibit 8, Email, was
5 marked.)

6 BY MR. GROSSI:

7 Q We're marking as Exhibit 8 a
8 memorandum -- I'm sorry -- an email. The top one
9 of which is dated August 16, 2017.

10 Now, this email indicates that
11 Mr. Earl Comstock wrote to Secretary Ross on
12 August 11th and he stated, quote, per your
13 request, here is a draft memo on the citizenship
14 question that James Uthmeier in the Office of
15 General Counsel prepared and I reviewed. Once you
16 have had a chance to review, we should discuss so
17 we can refine the memo to better address any
18 issues.

19 And it appears that Ms. Teramoto then
20 followed up on that by saying that Peter Davidson
21 and Karen Dunn Kelley will both be here Monday.
22 Let's spend 15 minutes together and sort this out.

1 And then Mr. Comstock responded to
2 Ms. Teramoto and to Secretary Ross by copy saying,
3 "Thanks, Wendy, that works for me."

4 Now, Wednesday was August 16th, and I'll
5 represent that the Monday was August 20th. Is
6 that consistent with your recollection that you
7 came in on August 20th and had a discussion about
8 various things?

9 MR. GARDNER: I think your math is wrong.

10 THE WITNESS: Sir, I think it was the
11 21st.

12 MR. GARDNER: The 21st.

13 THE WITNESS: August 21st. Or I said the
14 wrong date before, as well, so we have to correct
15 Monday -- Monday was the 21st.

16 BY MR. GROSSI:

17 Q You're right. Absolutely right.

18 So Monday was the 21st, and that's the
19 day you came in and assumed your position, okay.

20 And so you discussed with them on
21 August the 21st, among other things, I'm sure, the
22 draft memo on the citizenship question that had

1 been prepared for Secretary Ross, correct?

2 A I do not recall any conversations like
3 that.

4 Q Do you think that might have been the
5 first time you really got into the details of
6 adding it?

7 A I don't recall a conversation about it.

8 Q Okay. But you wouldn't deny that as of
9 August 21st, you had been briefed on the
10 citizenship issue?

11 MR. GARDNER: Objection. Mischaracterize
12 the witness's testimony.

13 THE WITNESS: As I said, I do not,
14 unfortunately, remember when I first learned about
15 it. It is possible. I'm not denying it. I'm not
16 confirming it. I just don't know. I wish I
17 could -- I wish I could tell you. I just don't
18 know.

19 BY MR. GROSSI:

20 Q Did you receive memoranda about the
21 citizenship question, and that's a shorthand of,
22 obviously, adding a citizenship question to the